

Comptroller of the Currency, Treasury

§ 30.6

the bank shall implement the compliance plan as previously approved.

§ 30.5 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order*—(1) *In general.* The OCC shall provide a bank prior written notice of the OCC's intention to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank shall have such time to respond to a proposed order as provided by the OCC under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the OCC finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the OCC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank immediately to take actions to correct a safety and soundness deficiency or take or refrain from taking other actions pursuant to section 39. A bank that is subject to such an immediately effective order may submit a written appeal of the order to the OCC. Such an appeal must be received by the OCC within 14 calendar days of the issuance of the order, unless the OCC permits a longer period. The OCC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the OCC, in its sole discretion, stays the effectiveness of the order.

(b) *Content of notice.* A notice of intent to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank;

(2) A description of any restrictions, prohibitions, or affirmative actions that the OCC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank subject to the order may file with the OCC a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A bank may file a written re-

sponse to a notice of intent to issue an order within the time period set by the OCC. Such a response must be received by the OCC within 14 calendar days from the date of the notice unless the OCC determines that a different period is appropriate in light of the safety and soundness of the bank or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the OCC is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed order.

(d) *Agency consideration of response.* After considering the response, the OCC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank, or any other relevant source.

(e) *Failure to file response.* Failure by a bank to file with the OCC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any bank that is subject to an order under this part may, upon a change in circumstances, request in writing that the OCC reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the OCC, the order shall continue in place while such request is pending before the OCC.

§ 30.6 Enforcement of orders.

(a) *Judicial remedies.* Whenever a bank fails to comply with an order issued under section 39, the OCC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Failure to comply with order.* Pursuant to section 8(i)(2)(A) of the FDI

Act, the OCC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OCC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

APPENDIX A TO PART 30—INTERAGENCY GUIDELINES ESTABLISHING STANDARDS FOR SAFETY AND SOUNDNESS

TABLE OF CONTENTS

I. Introduction

- A. Preservation of existing authority.
- B. Definitions.

II. Operational and Managerial Standards

- A. Internal controls and information systems.
- B. Internal audit system.
- C. Loan documentation.
- D. Credit underwriting.
- E. Interest rate exposure.
- F. Asset growth.
- G. Asset quality.
- H. Earnings.
- I. Compensation, fees and benefits.

III. Prohibition on Compensation That Constitutes an Unsafe and Unsound Practice

- A. Excessive compensation.
- B. Compensation leading to material financial loss.

I. INTRODUCTION

i. Section 39 of the Federal Deposit Insurance Act¹ (FDI Act) requires each Federal banking agency (collectively, the agencies) to establish certain safety and soundness standards by regulation or by guideline for all insured depository institutions. Under section 39, the agencies must establish three types of standards: (1) Operational and man-

agerial standards; (2) compensation standards; and (3) such standards relating to asset quality, earnings, and stock valuation as they determine to be appropriate.

ii. Section 39(a) requires the agencies to establish operational and managerial standards relating to: (1) Internal controls, information systems and internal audit systems, in accordance with section 36 of the FDI Act (12 U.S.C. 1831m); (2) loan documentation; (3) credit underwriting; (4) interest rate exposure; (5) asset growth; and (6) compensation, fees, and benefits, in accordance with subsection (c) of section 39. Section 39(b) requires the agencies to establish standards relating to asset quality, earnings, and stock valuation that the agencies determine to be appropriate.

iii. Section 39(c) requires the agencies to establish standards prohibiting as an unsafe and unsound practice any compensatory arrangement that would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits and any compensatory arrangement that could lead to material financial loss to an institution. Section 39(c) also requires that the agencies establish standards that specify when compensation is excessive.

iv. If an agency determines that an institution fails to meet any standard established by guideline under subsection (a) or (b) of section 39, the agency may require the institution to submit to the agency an acceptable plan to achieve compliance with the standard. In the event that an institution fails to submit an acceptable plan within the time allowed by the agency or fails in any material respect to implement an accepted plan, the agency must, by order, require the institution to correct the deficiency. The agency may, and in some cases must, take other supervisory actions until the deficiency has been corrected.

v. The agencies have adopted amendments to their rules and regulations to establish deadlines for submission and review of compliance plans.²

vi. The following Guidelines set out the safety and soundness standards that the agencies use to identify and address problems at insured depository institutions before capital becomes impaired. The agencies believe that the standards adopted in these Guidelines serve this end without dictating

¹Section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1) was added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102-242, 105 Stat. 2236 (1991), and amended by section 956 of the Housing and Community Development Act of 1992, Pub. L. 102-550, 106 Stat. 3895 (1992) and section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2160 (1994).

²For the Office of the Comptroller of the Currency, these regulations appear at 12 CFR Part 30; for the Board of Governors of the Federal Reserve System, these regulations appear at 12 CFR Part 263; for the Federal Deposit Insurance Corporation, these regulations appear at 12 CFR Part 308, subpart R, and for the Office of Thrift Supervision, these regulations appear at 12 CFR Part 570.